more suitable occasion especially as, whether an act of bankruptcy was committed when the offer was made on December 29 or only when the period of 14 days expired *i.e.* on January 12 the following year, the appellant (who was present at the meeting and was circularised with the offer) must clearly be taken to have had notice of the commission of this act of bankruptcy by the debtors so as to bring the monies obtained by garnishment within the net of section 50 of the Bankruptcy Act.

The Official Assignee had a further contention that there was an earlier act of bankruptcy and that was when the appellant itself levied execution by garnishment proceedings on October 6, 1970. The learned judge however did not deal with this point though submissions were made and I consider it better to defer consideration of this point to another occasion.

I would dismiss the appeal with costs. Deposit to the respondent against taxed costs.

Suffian L.P. and **Ong Hock Sim F.J.** concurred.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.*

KRISHNAN v. HOR KOH MOI

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Raja Azlan Shah F.J.) April 5, 1975]

[Ipoh — Federal Court Civil Appeal No. 143 of 1973]

Landlord and Tenant — Claim for possession of premises — Whether premises within limits of local authorities — "Local authority" — Meaning of — Whether premises controlled premises — Onus of proof — Control of Rent Act, 1966, ss. 1(2), 4(1) and 4(2).

The appellant had claimed possession of premises occupied by the respondents. The question was whether the premises were controlled premises under the Control of Rent Act, 1966. The learned judge held that the premises were controlled premises. The appellant appealed.

Held: (1) as the premises were within and under the jurisdiction of a local council and were built before 1948, they were controlled premises within the meaning of the Control of Rent Act, 1966;

(2) the onus of proof was on the appellant as landlord to show that the premises were not protected under the Act.

Case referred to:-

(1) *Ying Chiang* v. *Bong Tjhin Oi* [1973] 2 M.L.J. 136.

FEDERAL COURT.

S. Jeya Palan for the appellant.

Lim Seong Chon for the respondent.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): This is an appeal against the decision of the learned judge dismissing an appeal from the Magistrate's Court, Sitiawan.

Appellant sued respondent to recover possession of a piece of land known as premises No. 102, T. K. Liew Road, Sitiawan. The land was under the jurisdiction of Kampong Koh Local Council. From 1939 to 1955 Ling Kee Long was the registered owner of the land. In 1955 he transferred it to his son, Ling Sheong Aik. In 1962 Ling Kong Kwang became the owner. He transferred it to Teoh Ah Geok in 1969. It was not until November 26, 1971 that the appellant became the owner. There was a house on the land which was occupied by respondent since 1947. By an agreement dated February 10, 1951 Ling Kee Long sold the house for $600 to respondent who agreed to pay a ground rent of $1.50 per month. One of the terms of the agreement was that as long as respondent carried on paying the ground rent the owner would have no right to demand for the demolition of the house. On March 1, 1972 appellant served respondent with the usual one month's notice to quit.

One of the grounds upon which respondent resisted the claim for possession was that the premises were protected by the Control of Rent Act, 1966. Appellant contended that the burden was on respondent to prove that the building in question was controlled premises. To do so respondent would have to show that the building was within the area of the Local Authority and that the building was completed before January 31, 1948.

In his evidence respondent stated that he resided in the house since 1947 and bought the house from Ling Kee Long in 1951. Ngok Toh Heng (DW3) was the son-in-law of Ling Kee Long. He testified that the house was built before the Japanese occupation. He collected rent on behalf of Ling Kee Long. He corroborated substantially the evidence of respondent. Wong Boon Huai (DW4), respondent's neighbour confirmed that the house was built before the Japanese occupation. It is quite clear that respondent had established that the building was completed long before 1948. The magistrate found as a fact that the building was completed before 1948. That was accepted by the learned judge.

Appellant conceded that the said building was within the area of the Local Council of Kampong Koh. However, he maintained that only those areas covered by a local council established under the Local Council Ordinance, 1952 which had previous to that formed part of an area covered by a Municipality, Town Council, Town Board or Rural Board are covered by the provisions of the Control of Rent Act, 1966. I do not think that such a proposition can be supported. Section 1(2) of the 1966 Act applies to all areas which are within the limits of the Local Authorities. In order to determine whether an area within a local council falls within the definition of a Local Authority, it is necessary to see what are the areas contemplated by the 1966 Act. "Local Authority" is defined by section 2(1) of the 1966 Act to mean: —

"... a Municipality, Town Council, Town Board or Rural Board, and in respect of any part of its area which immediately before the coming into force of the Local Councils Ordinance, 1952 was included in the area of a Municipality, Town Council, Town Board or Rural Board, a Local Council established under that Ordinance and any reference to 'the local authority' shall be construed as a reference to the local authority in whose area the premises in question are situated;".

An area is within the meaning of the definition of "Local Authority" if it falls within: —

(a) A Municipality, Town Council, Town Board or Rural Board; or

(b) Any part of an area which was included in a Municipality, Town Council, Town Board or Rural Board before the operation of the Local Council Ordinance, 1952; or

(c) A Local Council established under the Local Council Ordinance, 1952.

That the premises are within and under the jurisdiction of the Local Council of Kampong Koh is not disputed. Appellant himself admitted that when he gave evidence to the effect that the land was within the Local Council of Kampong Koh which was given a local council status in 1954. Quite clearly the Local Council of Kampong Koh was established under the Local Council Ordinance, 1952. That being so, the land in question must be considered to be within the definition of a "Local Authority".

With respect, the position was summed up by the learned judge very nicely when he said: —

"The effect of the definition is that any premises which are situated in the area and jurisdiction of a Municipality, Town Council, Town Board, Rural Board or Local Council receive the protection of the Act provided they are controlled premises."

Since it had been established that the building was built long before 1948 it is clear that under section 4 of 1966 Act the onus rests upon the appellant as the landlord to show that the premises in question are not protected by the said Act or that the Act does not apply.

For the purpose of this appeal it is only necessary to refer to the relevant provisions of section 4 which reads: —

"4. (1) Except for the premises mentioned in subsection (2) all premises shall be subject to the operation of the provisions of this Act and any such premises shall for the purposes of this Act be called 'controlled premises'.

(2) The following premises shall be free from the operation of any of the provisions of this Act, namely:—

(a) buildings completed after the 31st day of January, 1948; ...."

In brief, under the section all premises are presumed to be controlled premises and subject to the Act with the exception of those premises referred to in section 4(2). Again, with respect to the learned judge, he was perfectly right to say: —

"Under section 4(1) of the Act all premises are deemed to be subject to the provisions of the Act unless they are covered by section 4(2) or are such that the Act cannot be said to apply to them. The presumption consequently is that the premises in a Local Council Area are rent controlled premises. It thus becomes the duty of the landlord to show that the premises in question are not protected under the Act."

The reason why the onus rests on the landlord and not on the tenant was given by Suffian F.J., as he then was, in *Yong Chiang* v. *Bong Tjhin Oi*[1]: —

"If I had to decide this point on general principles, I would say that it is for the tenant to prove that the shophouse is subject to the Act, because the general rule is that a landlord is free to impose any condition as to rent, security of tenure, etc., he pleases on his property, and if the tenant seeks protection against a notice to quit given by the landlord, it is for him to prove that he (the tenant) is protected by any special terms in the lease or by any special legislation. But the position is that the general principle has been expressly altered by statute, namely, section 4 of the Act, ...".

Unless the appellant can bring his case within any of the grounds set out under section 16 of the Act he cannot, in my view, succeed in his claim. Like the learned judge, I do not consider it to be necessary to go into other points raised. I would dismiss the appeal with costs here and in the courts below.

Appeal dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Lim Seong Chun & Co.*

SAU SOO KIM v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ali F.J.) April 12, 1975]

[Kuala Lumpur — Federal Court Criminal Appeal No. 22 of 1974]

Criminal Law and Procedure — Joint trial of appellant and another accused — Appellant acquitted at trial but other accused convicted — On appeal by other accused his trial declared nullity — Appellant subsequently charged on different charges for offences arising out of same facts — Appellant convicted on pleading guilty — Appeal by appellant — No right of appeal — Whether plea of autrefois acquit available to appellant — Sentence — Criminal Procedure Code (F.M.S. Cap. 6), ss. 302 — Courts of Judicature Act, 1964, s. 50(2).

In this case the appellant and one Tan Soo Hor were jointly charged before the High Court in Ipoh for an offence under section 3 of the Firearms (Increased Penalties) Act, 1971. At the conclusion of the trial before a jury the appellant was acquitted but Tan Soo Hor was convicted. Tan Soo Hor appealed to the Federal Court and the Federal Court declared that his trial was a nullity and ordered that the conviction and sentence imposed upon him be set aside. Subsequently the appellant and Tan Soo Hor were separately tried and on different charges for offences arising out of the same facts and circumstances as the earlier case. The appellant pleaded guilty and he was convicted and sentenced to ten years' imprisonment on the first charge, four years on the second charge and four years on the third charge. The appellant appealed to the Federal Court.

Held (Lee Hun Hoe C.J. (Borneo) and Ali F.J., Suffian L.P. dissenting): (1) The proviso to section 50(2) of the Courts of Judicature Act, 1964, should be adhered to strictly in this case where the appellant was represented by counsel, and therefore as the appellant had pleaded guilty there could be no appeal except as to the extent or legality of the sentence;

(2) in this case the plea of *autrefois acquit* would not have been available to the appellant at the trial, had he raised it, as the first trial had been declared a nullity;

(3) in the circumstances of this case the sentences on the second and third charges should run concurrently.

Cases referred to:-

(1) *Yue Sang Cheong Sdn. Bhd.* v. *Public Prosecutor* [1973] 2 M.L.J. 77.
(2) *R.* v. *Bowman* 6 C. & P. 337.
(3) *R.* v. *Bates* [1912] 1 K.B. 964.
(4) *R.* v. *Marsham* [1912] 2 K.B. 362.
(5) *Yusoffalli Mulla Noorbhoy* v. *King* A.I.R. 1949 P.C. 264, 267.
(6) *R.* v. *Kastercum* (1972) 56 Cr. App. R. 298.
(7) *R.* v. *Faulkner* (1972) 56 Cr. App. R. 594.
(8) *Wong Lai Fatt* v. *Public Prosecutor* [1973] 2 M.L.J. 31.

FEDERAL COURT.

Datuk S. P. Seenivasagam for the appellant.

Lamin bin Haji Yunus (Deputy Public Prosecutor) for the respondent.

Suffian L.P.: This criminal trial has given us a great deal of trouble, and consequently we are taking the unusual step of delivering three separate judgments. Both my learned brethren are not here, and in their absence I shall read first the judgment of the learned Chief Justice and then that of my brother Ali, followed finally by mine.

Lee Hun Hoe C.J. (Borneo) (read by **Suffian L.P.**): This is an appeal against conviction and sentence. The appeal raises important questions concerning the right to appeal against conviction after a plea of guilty and the rules relating to the plea of *autrefois acquit*.